

additional data on red-cockaded woodpecker use of the area from their in-house surveys. The Service requested that the NCDOT consider the presence of the red-cockaded woodpecker in their environmental document and include survey work and foraging habitat analysis along the entire route.

On March 18, 1997, Service biologists visited SR 1200 with Randy Turner and Jerry Jennings of the NCDOT, personnel from the North Carolina Natural Heritage Program, and Don Johnson of Union Camp. The Service observed that all of the landowners along the first several miles of SR 1200 had cleared trees from within the staked right-of-way limits. Union Camp representatives indicated that the NCDOT right-of-way agent had told them to "cut it if you want the timber, because we will just doze it down."

Despite the Service's intervention, asking the NCDOT to consider the known presence of red-cockaded woodpeckers and their habitat, habitat was removed prior to the completion of any environmental documents and prior to Service concurrence. A law enforcement investigation has been initiated. This is not the procedure we wish to follow. The Service prefers to work cooperatively with agencies to consider the occurrence of species, their life history needs, and proposed project designs prior to habitat modification.

It has come to our attention that plans are being developed for the paving of secondary roads that closely parallel the Little Tennessee River in Swain and Macon Counties. The Little Tennessee River is inhabited by two endangered mussels--the Appalachian elktoe (*Diosmidonta raveneliana*) and little-wing pearl mussel (*Pegasis fabula*)--and a threatened fish, the spottfin chub (*Cyprinella monzoni*). We are concerned about potential impacts to these species when these roads are paved. With the Gates County experience in mind, how can the NCDOT assure the Service that endangered and threatened species will be protected in similar division design/construction project?

The presence or absence of federally listed species in the project impact area should be addressed in any environmental document prepared for these projects. Please note that the legal responsibilities of a Federal agency or their designated non-Federal representative with regard to federally listed endangered and threatened species under Section 7 of the Act are on file with the Federal Highway Administration. Further note that, even if no Federal funds or permits are required to complete a secondary road improvement project, under Section 9 of the Act, the "taking" of endangered species is still prohibited. "Take" has been defined to include harm and harass. Recent court decisions have upheld the Service's definition of harm to include adverse habitat modifications. Section 14 of the Act includes civil and criminal penalties.

Additionally, the Service believes the environmental document(s) for all proposed projects should address the following issues: (1) temporary bridges or structures associated with any proposed bridge replacements; (2) any special measures proposed to minimize sedimentation during construction; and (3) any measures that will be implemented to minimize impacts to fish and wildlife habitat (e.g., protecting riparian vegetation whenever possible).

Enclosed is a species list (Federal endangered, threatened, and species of concern), as well as species summary accounts and lists of known concentrations or geographic areas of concern.